



UNITED STATES PATENT AND TRADEMARK OFFICE

Fw

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,815	04/16/2004	Arnaud Hervas	(P3339) 18602-08904	8683

758 7590 05/22/2006

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

EXAMINER

NGUYEN, HIEP T

ART UNIT PAPER NUMBER

2187

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/825,815	HERVAS, ARNAUD	
	Examiner	Art Unit	
	Hiep T. Nguyen	2187	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,12,20 and 28-35 is/are rejected.
- 7) ☒ Claim(s) 2-11,13-19 and 21-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-35 are presented for examination.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 28-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Although the preamble includes a recitation of a computer system but the body of the claims is directed software only (i.e. computer program per se) which is directed to a non-statutory subject matter.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - a. A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1, 12, 20, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cabrera, U.S. Patent No. 6,757,794 [hereafter, Cabrera] in view of a general knowledge available to one having ordinary skill in the art.
 - a. Cabrera teaches that the parameters being used for assigning a priority to a data item and determining whether the data item should be stored in a cache are cost of storing the data, the time of retrieval, frequency of access, and data size, etc. [see col. 1, lines 30-54].

Art Unit: 2187

- b. Cabrera, however, does not explicitly teaches that his method and apparatus assigns a cache priority to a data item as a function of the item's size, retrieval cost and access frequency.
- c. Still, one having ordinary skill in the art at the time the invention was made, looks at the above mentioned teaching of Cabrera, would readily recognize that selecting the number of parameters for used in determining the cache priority for a data item is no more than a matter design choice. Furthermore, one having ordinary sill in the art would readily recognize that depending on a particular application the cache is being used, there are certain cache policies and/or parameters being used in determining which data should be cache would be more effective comparing to the others.
- d. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further configure the Cabrera apparatus to assign a cache priority to a data item as a function of the item's size, retrieval cost, and access frequency so that to further improve the effectiveness of data caching.

Allowable Subject Matter

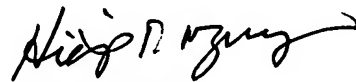
- 6. Claims 2, 4, 6, 8-11, 13, 15-19, 21-27 are objected to as being dependent upon a rejected base claim, but would be allowable over the prior art of record if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Consequently, claims 3, 5, 7, and 14 would also be allowed over the prior art of record.

Conclusion

- 7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
 - a. Cabrera et al., 6,490,666, teaches buffering data in hierarchical data storage environment.
 - b. Cabrera et al., teaches a system and methods for migration and recall of data from local and remote storage.

Art Unit: 2187

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hiep T. Nguyen whose telephone number is (571) 272-4197. The examiner can normally be reached on Monday-Friday from 6:30 AM-3:00 pm.
9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hiep T Nguyen
Primary Examiner
Art Unit 2187

HTN